No. 05-35

In The

# Supreme Court of the United States

MELISSA C. TAYLOR,

*Petitioner,*

versus

JOHN E. POTTER, Postmaster General,
United States Postal Service,

*Respondent.*

**On Petition For Writ Of Certiorari**
**To The United States Court Of Appeals**
**For The Fifth Circuit**

## PETITION FOR REHEARING ON BEHALF OF THE UNITED STATES FEDERAL EMPLOYEES

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## PETITION FOR REHEARING ON BEHALF OF THE UNITED STATES FEDERAL EMPLOYEES

In having an opposing opinion to the Court's October 3, 2005, ruling in this case, the Court has not put into consideration that there has been a difference in the treatment with federal employees when it comes to disabilities. Unprecedented perplexity and turmoil in the Court's decision is not clear on what makes an individual totally disabled. It should be noted that a brain or stroke related on-the-job injury is not emphasized in 5 USC 81 Compensation for Workers Injuries Section 81 (Title 5, Section 8105); consequently, not allowing these individuals the same benefits as other federal employees receive,[1] there is a discrete variation in the treatment of federal on-the-job injured employees as it is shown in Title 5, Section 8105.

This is a case suggesting that the government has treated individuals that work for the United States of America in a bias manner. This oversight to exclude brain and stroke on-the-job individuals will set the basic qualities that constitute what is just and correct only because they have been determined on the offset of Title 5, Section 8105 as totally disabled. The uncertainty surrounding the correct protocol for what it takes to determine if an individual is totally disabled needs to be established for all citizens inclusively. In determining the status of an individual the Court should set an accurate standard with

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[1] (a) If the disability is total the United States shall pay the employee during the disability monthly monetary compensation equal to 66⅔ percent of his monthly income, which is known as his basic compensation for total disability. (b) The loss of use of both hands, both arms, both legs or the loss of sight of both eyes, is prima facie permanent total disability.

equal uniformity is allowed to protect each and everyone, something which Title 5, Section 8105 does not do.

The Social Security Administration has not made a distinction in its verdict on establishing that I am totally disabled; however, the United States Department of Labor (USDOL) and the United States Postal Service (USPS) has made several discrepancies with the unreliability of Title 5, Section 8105. The USDOL and the USPS did not make note that I was totally disabled until 2001 and I had the job injury in 1990. The overlooking of this matter by the Court has left me to look at the treatment of on-the-job disabled injured individuals in the federal government. Failure to see the crucial aspect of brain and stroke related on-the-job injuries is setting a vital precedence and is a mishap in our governmental system and should be addressed.

In addition to the serious concerns for the treatment of federal employees with on-the-job injury they are not benefiting as other recipients who have received better benefits from other social government programs. It is apparent that the Court opinion will make a clear statement with the on-the-job individuals of the federal system by overhauling Title 5, Section 8105.

Finally, the October 3, 2005, decision should be evaluated and after looking at these additional points there will with out a doubt be an impact which will stabilize the instability of the current status for disabled individuals who have suffered an on-the-job brain or stroke injury in the federal government.

## I. The Evidence That Title 5, Section 8105 Has Denied Brain And Stroke Injured Individuals Initial Total Disability Status And The Difference In Federal Employees Benefits And Social Security Benefits.

The federal employees' benefits under Title 5, Section 8105 do not supply individuals who suffer a brain or stroke on-the-job injury with the same protection as the current benefactors receive. Therefore, the same coverage is not given to every individual who is employed by the USPS. Under the present policy it does not allow an individual with a brain or stroke on-the-job injury to receive total disability at the start, and Title 5, Section 8105 prohibits that from occurring. The current policy does not allow these individuals the same protection at the onset of an injury because they have been left out as federal employees so they do not receive full protection.

Title 5, Section 8105 does not permit brain and stroke individuals the same privileges and coverage as it does to the totally disabled individuals. Title 5, Section 8105 excludes privileges as well as immunity from federal employees who are hurt on-the-job; consequently, making an underlying distinction between brain and stroke on-the-job injured individuals and the totally disabled individuals initially.

Social Security sees me as totally disabled and I started receiving benefits; whereas, the USDOL saw me as partially disabled instead. If Title 5, Section 8105 would have found me as totally disabled initially, I would not have had to go through ten years of red tape. Not changing Title 5, Section 8105 to include brain or stroke on-the-job

injuries could prohibit individuals from receiving minimum benefits that Social Security is giving to their recipients. Social Security recipients receive a far superior protection than the federal employees who suffer a brain or stroke on-the-job injury.

Comparing Social Security Disability (SSD) to Title 5, Section 8105, the differences are very translucent when they are put side by side. The Social Security Administration (SSA) differs from the United States Department of Labor (USDOL) and every other governmental programs. Social Security benefits allow their recipients to work and continue to receive benefits and keep the status as totally disabled as well. Social Security should not have better benefits than the on-the-job injured federal employees. The USDOL, because of Title 5, Section 8105, will not allow their recipients the privilege of working and still have the status of being totally disabled. If you were to go back to work, you are considered partially disabled under Title 5, Section 8105. If all government agencies would characterize the status of a disabled individual in the same manner there would not be separation in our federal health policies. If the different federal branches of government could agree on who is entitled to receive the total disability status then our different entities could agree on who is totally disabled and who is considered partially disabled.

National Association of Letter Carriers (NALC) was the insurance I had when I was still employed at the USPS, and it allowed me to see any doctor anywhere. After I was released from the USPS I was placed on Medicare as my primary and NALC became my secondary. Medicare is a benefit which Social Security recipients are offered. Medicare isn't accepted by all doctors.

It has been brought to my attention in September, 2005 by my doctor's technician that I have a leaky heart valve. The USDOL had required that I see a heart doctor in a letter in 1998, but I question their motives as to why would I need to see a heart doctor. The USDOL later withdrew the request. There have been several heart doctors I have seen since the USDOL suggested that I see one and the heart valve condition went undetected. Even though all the doctors that I had seen earlier did not detect this condition, I am still facing these new findings. There are letters in my possession releasing me from these doctors saying they could not detect a heart condition at that time. Now that my insurance has changed I feel that my life could be in jeopardy, because all doctors do not accept Medicare.

No one asks for an on-the-job injury, but to lose the freedom to go to any doctor and have your insurance coverage change, is unjust. I was injured on the job and they should not be allowed to place me on the insurance of their choice, and that's what happened when I was placed on Medicare.

## II. Federal Employees With On-The-Job Brain Or Stroke Injuries Are Being Discriminated In The Work Place By Title 5, Section 8105.

The treatment of federal employee are incapable of being avoided by this Court and will soon have to confront the issue of the unfair handling of on-the-job injured employees who have brain and stroke related injuries. The matter before this Court became an issue in October, 1995. The USDOL informed me that I was seen as a partially disabled employee instead of a totally disabled employee.

Now the Courts will be obliged to resolve and address the question whether uncategorized distinctions in Title 5, Section 8105 are discriminating against brain and stroke individuals as we have seen here by the federal government.

I have gone from partially disabled in October, 1994, to totally disabled, back to partially in January, 1999 to totally in 2001, and now I cannot retire because there has been a mixup in that too. All these things would not have occurred if there was a clause in Title 5, Section 8105 which included brain and stroke on-the-job injuries. There is not just treatment in changing my disability status several times over the years. In the matter of two people who work at the same place with on-the-job injuries, the first one received total disability for his injuries. The second one had a stroke on-the-job injury and lost the use of one arm, the use of one leg, and had a brain injury as well and ends up being considered partially disabled. I am that second person.

There are several questions that need to be answered as to why all federal employees are not receiving the full protection of Title 5, Section 8105. Currently, Title 5, Section 8105 is not providing full means to shield all on-the-job injured. I am asking the Court at the federal level of our government to rehear the case and try to gain understanding and skillfully apply what has been mastered by this petition. The court in its obligation to consider all points of view should fully consider the interest of all federal employees and not just the able bodied.

There should not be a distinct difference with federal employees and we have been shown that Title 5, Section 8105 makes a distinctive diversity with its employees.

Also, it will make a difference in how federal on-the-job injured employees are treated compared to Social Security recipients in the future.

The Court should represent the interest of all parties involved including the federal employees with brain or stroke on-the-job injuries; however, Title 5, Section 8105 especially omits these individuals. Indeed, our legislatures could have an opportunity to adopt a revised policy other than Title 5, Section 8105 for federal employees, who are hurt on the job, making everyone equal. If the Courts change their rulings and revise Title 5, Section 8105, it would lead to a reasonable and beneficial ruling for federal employees.

With the Court being a part of the federal government lets not ignore that these are federal employees and let us show that when something has been brought to the Court's attention that is unjust, we seize the opportunity to fix it.

## III. The Courts Now Say I Am "A Qualified Individual With A Disability"; However, I Can Still Speak Of Title 5, Section 8105 As A Citizen On How It Discriminates Against Current Federal Employees.

The lower Court said, "I am a qualified individual with a disability" because I am now seen as totally disabled individual. The Courts have neglected to see me as a citizen who finds a flaw in our governmental laws and legally take that action to alleviate the suffering it causes. Therefore, the Court is asked to respectfully rehear the case not as "a qualified individual with a disability" but an individual who is concerned for all federal employees.

It is noted that the status has been changed on the disability of the Petitioner several times; therefore, changing the "qualification" status as well. The Court should look at the case all over again and then make the decisions that will amend Title 5, Section 8105.

## CONCLUSION

There are three things that the Court has not considered before its October 3, 2005 decision: First, the evidence of discriminating against federal employee at this stage has not been considered and the Court's opinion will determine how they are treated in the future. Second, the comparison of federal on-the-job injured employees and their treatment, to similar programs in the government and their benefactor's. Third, I am not speaking as a federal employee only, but I am speaking as a citizen who would like to see changes in Title 5, Section 8105.

These are the reasons why all federal employees who could be affected by Title 5, Section 8105 should be granted a rehearing by the Court.

Respectfully submitted,

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## RULE 44.1 CERTIFICATE

Undersigned Petitioner hereby certifies that the foregoing Petition for Rehearing in *Taylor v. Potter*, No. 05-35, is presented in good faith and not for delay.

MELISSA TAYLOR